

Attachment to notice of Allowance

1. Applicants' appeal brief of 09/01/2009 is acknowledged.

Status of Claims

2. Claims 15, 23 and 24 are pending and under consideration.

Rejections Withdrawn

3. Rejections of claims 15, 23 and 24 under 35 U.S.C. 103 (a) made in paragraph 6 of the office action mailed 04/24/2008 is withdrawn in view of applicants' interview and examiner' amendment of 11/03/2009.

EXAMINER'S AMENDMENT

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with U. John Biffoni reg # 39,908.

Please amend claim 15 as following:

Claim 15 (currently amended) A method of determining the presence of staphylococcal enterotoxin A gene in a sample, comprising:

contacting a target nucleic acid sequence which comprises a portion of the *S. aureus* entA gene encoding staphylococcal enterotoxin A, with polymerase chain reaction reagents specific for the target nucleic acid sequence, the polymerase chain reaction reagents including a primer selected from the group consisting of a forward primer ~~having~~ consisting of a specific sequence selected from the group consisting of SEQ ID NO: 3, SEQ ID NO: 4 and combinations thereof, and a reverse primer ~~having~~ consisting of a specific sequence selected from the group consisting of SEQ ID NO: 5, SEQ ID NO: 6 and combinations thereof, a polymerase enzyme, and a nucleic acid probe, wherein the nucleic acid probe further comprises:

a nucleic acid sequence that hybridizes to a portion of the target nucleic acid sequence wherein the portion is unique to the nucleic acid encoding staphylococcal enterotoxin A, and wherein the nucleic acid sequence of the nucleic acid probe is selected from the group consisting of SEQ ID NO: 1, SEQ ID NO: 2 and combinations thereof;

a reporter attached to a 5' end of the nucleic acid probe, said reporter capable of emitting a detectable signal;

a quencher attached to a 3' end of the nucleic acid probe capable of substantially quenching the reporter and prevent emission of the detectable signal, when the nucleic acid probe is intact, wherein the reporter becomes substantially unquenched when the nucleic acid probe is cleaved by the polymerase enzyme during amplification of the target nucleic acid sequence;

amplifying the target nucleic acid sequence by thermal cycling, wherein the thermal cycling will amplify the target nucleic acid sequence; and

measuring the level of fluorescence in the sample subsequent to thermal cycling, and further wherein the level of detectable signal is correlated to an amount of the nucleic acid encoding staphylococcal enterotoxin A in the sample, thereby quantitatively detecting the nucleic acid encoding staphylococcal enterotoxin A in the sample.

Allowable Subject Matter

5. Claims 15, 23 and 24 are allowed. Claims are renumbered 1-3.

The following is an examiner's statement of reasons for allowance:

Amended claim 15 recites **specific primers** selected from the group consisting of a forward primer consisting of a specific sequence selected from the group **consisting of SEQ ID NO: 3, SEQ ID NO: 4** and combinations thereof, and a reverse primer consisting of a specific sequence selected from the group **consisting of SEQ ID NO: 5, SEQ ID NO: 6** and combinations thereof, a polymerase enzyme, and a nucleic acid probe, wherein the nucleic acid probe further comprises: a nucleic acid sequence that hybridizes to a portion of the target nucleic acid sequence wherein the portion is unique to the nucleic acid encoding staphylococcal enterotoxin A, and wherein the nucleic acid sequence of the nucleic acid probe is selected from the group consisting of

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SEQ ID NO: 1, SEQ ID NO: 2 and combinations thereof. The prior art fails to teach or disclose such primers.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khatol Shahnian-Shah whose telephone number is (571)-272-0863. The examiner can normally be reached on Monday-Friday 7:30 AM-5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert B. Mondesi can be reached on 571-272-0956.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/Khatol S Shahnian-Shah/

Examiner, Art Unit 1645

November 4, 2009

/Robert B Mondesi/

Supervisory Patent Examiner, Art Unit 1645